

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 3:05-cr-287-F
)	
CORNELIUS DONAL TURNER)	

RESPONSE TO MOTION TO SUPPRESS

Comes now the United States of America, by and through Leura Garrett Canary, United States Attorney for the Middle District of Alabama, and in response to the Motion to Suppress filed by the Defendant herein, the following is submitted:

1) On June 23, 2005, Lee County Deputy Sheriff Jimmy Sanders conducted a traffic stop for the traffic violation of failure to dim headlights for which the Defendant was issued a traffic ticket (See Exhibit A). He was also given a ticket for driving while revoked. The Defendant was driving but told officers his name was Chris Phillips and provided a false date of birth and social security number. Lee County Sheriff's Investigator Eric McCain arrived at the scene of the stop to assist Deputy Sanders and instructed the driver to exit the vehicle. Deputy Sanders patted the driver down for weapons and asked if there was anything in the vehicle. Defendant replied there was a pistol under the driver's seat and that he did not have a permit to carry the pistol. Deputy Sanders recovered the pistol and also found a bag on the passenger side seat that contained six off-white rocks that field tested positive for the presence of cocaine.

2) Deputy Sanders then placed the subject under arrest and a further search yielded \$755.00 in his left pants pocket and a set of scales from his right pants pocket. The subject then gave his correct name as Cornelius Donal Turner. Investigator McCain interviewed Turner who gave a rights advised written statement admitting the car belonged to him, that he had purchased the crack the previous day and had purchased the pistol about two months earlier.

3) The conduct of the officers was not a violation of the Defendant's rights. In United States v. Purcell, 236 F.3d 1274 (11th Cir. 2001), the Eleventh Circuit held that it is well established

that officers conducting a traffic stop may take such steps as are reasonably necessary to protect their personal safety. The Court held this to include conducting of protective search of the driver and the vehicle. The officer may seize any contraband, including weapons, in plain view. The officer may also prolong the detention to investigate the driver's license and the vehicle registration.

4) Once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendments proscription of unreasonable searches and seizures. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

5) Here, the officers were protecting themselves by patting the Defendant down and asking if he had anything in the vehicle. The Defendant admitted having a pistol and that he did not have a permit. The recovery of the pistol and discovery of the crack cocaine followed and was not a violation of the Defendant's Fourth Amendment rights.

6) Once the Defendant was arrested, he was searched and additional evidence of illegal conduct was discovered. Defendant was then taken to the Lee County Sheriff's Office where he was advised of his rights, executed a waiver of rights and made a statement.

Wherefore, premises considered, the United States submits that the Motion to Suppress is due to be denied.

Respectfully submitted this the 31st of January, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:
Don Bethel.

Respectfully submitted,

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